
SENATE BILL No. 428

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-50-2-8.

Synopsis: Habitual offenders. Provides that a person may be found to be a habitual offender only if the person commits a violent felony. Specifies that a violent felony is a crime against the person, certain types of arson, burglary of a dwelling or while armed, resisting law enforcement while armed, escape while armed, rioting while armed, or any other felony that results in serious bodily injury.

Effective: July 1, 2003.

Waterman, Antich

January 21, 2003, read first time and referred to Committee on Judiciary.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 428

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-50-2-8, AS AMENDED BY P.L.291-2001,
2 SECTION 226, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) **As used in this section,**
4 **"violent felony" means the following:**

5 (1) A felony under IC 35-42, with the exception of railroad
6 mischief (IC 35-42-2-5.5).

7 (2) Arson (IC 35-43-1-1) for hire that endangers human life or
8 results in injury to a person other than the defendant.

9 (3) Burglary (IC 35-43-2-1) as a Class B felony.

10 (4) Resisting law enforcement (IC 35-44-3-3) with a deadly
11 weapon.

12 (5) Escape (IC 35-44-3-5) with a deadly weapon.

13 (6) Rioting (IC 35-45-1-2) with a deadly weapon.

14 (7) Any other felony that involves serious bodily injury.

15 (8) An attempt to commit a felony described in subdivisions
16 (1) through (7).

17 (b) Except as otherwise provided in this section, the state may seek



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to have a person sentenced as a habitual offender for any **violent** felony by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated two (2) prior unrelated **violent** felony convictions.

~~(b)~~ (c) The state may not seek to have a person sentenced as a habitual offender for a **violent** felony offense under this section if

~~(1)~~ the ~~offense~~ **violent felony** is a misdemeanor that is enhanced to a felony in the same proceeding as the habitual offender proceeding solely because the person had a prior unrelated conviction.

~~(2)~~ the offense is an offense under IC 9-30-10-16 or IC 9-30-10-17; or

~~(3)~~ all of the following apply:

~~(A)~~ The offense is an offense under IC 16-42-19 or IC 35-48-4;

~~(B)~~ The offense is not listed in section 2(b)(4) of this chapter;

~~(C)~~ The total number of unrelated convictions that the person has for:

~~(i)~~ dealing in or selling a legend drug under IC 16-42-19-27;

~~(ii)~~ dealing in cocaine or a narcotic drug (IC 35-48-4-1);

~~(iii)~~ dealing in a schedule I, II, III controlled substance (IC 35-48-4-2);

~~(iv)~~ dealing in a schedule IV controlled substance (IC 35-48-4-3); and

~~(v)~~ dealing in a schedule V controlled substance (IC 35-48-4-4);

does not exceed one ~~(1)~~.

~~(c)~~ (d) A person has accumulated two (2) prior unrelated **violent** felony convictions for purposes of this section only if:

(1) the second prior unrelated **violent** felony conviction was committed after sentencing for the first prior unrelated **violent** felony conviction; and

(2) the ~~offense~~ **violent felony** for which the state seeks to have the person sentenced as a habitual offender was committed after sentencing for the second prior unrelated **violent** felony conviction.

~~(d)~~ (e) A conviction does not count for purposes of this section as a prior unrelated **violent** felony conviction if

(1) the conviction has been set aside; or

(2) the conviction is one for which the person has been pardoned.

or

(3) all of the following apply:

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(A) The offense is an offense under IC 16-42-19 or IC 35-48-4.

(B) The offense is not listed in section 2(b)(4) of this chapter.

(C) The total number of unrelated convictions that the person has for:

(i) dealing in or selling a legend drug under IC 16-42-19-27;

(ii) dealing in cocaine or a narcotic drug (IC 35-48-4-1);

(iii) dealing in a schedule I, II, III controlled substance (IC 35-48-4-2);

(iv) dealing in a schedule IV controlled substance (IC 35-48-4-3; and

(v) dealing in a schedule V controlled substance (IC 35-48-4-4);

does not exceed one (1).

(f) The requirements in subsection (b) (c) do not apply to a prior unrelated **violent** felony conviction that is used to support a sentence as a habitual offender. A prior unrelated **violent** felony conviction may be used under this section to support a sentence as a habitual offender even if the sentence for the prior unrelated **offense violent felony** was enhanced for any reason, including an enhancement because the person had been convicted of another offense. ~~However, a prior unrelated felony conviction under IC 9-30-10-16, IC 9-30-10-17, IC 9-12-3-1 (repeated); or IC 9-12-3-2 (repeated) may not be used to support a sentence as a habitual offender.~~

(g) If the person was convicted of the **violent** felony in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing under IC 35-38-1-3.

(h) A person is a habitual offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had accumulated two (2) prior unrelated **violent** felony convictions.

(i) The court shall sentence a person found to be a habitual offender to an additional fixed term that is not less than the presumptive sentence for the underlying offense nor more than three (3) times the presumptive sentence for the underlying offense. However, the additional sentence may not exceed thirty (30) years.

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